

COMMISSIONERS APPROVAL

ROKOSCH *JR*

GRANDSTAFF *g*

THOMPSON *AT*

CHILCOTT *je*

DRISCOLL *LD*

PLETTENBERG (Clerk & Recorder)

Date.....January 2, 2008

Members Present.....Commissioner Carlotta Grandstaff, Commissioner Jim Rokosch, Commissioner Greg Chilcott, Commissioner Alan Thompson and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

► The Board met for the Commission Board reorganization. Present at this meeting was Civil Counsel Alex Beal. After discussion, it was agreed no Commissioner Committee Membership would be changed because those committee memberships were established in June of 2007. Commissioner Rokosch suggested the calendar reflect committee updates by the Commissioners at the end of each month.

Commissioner Chilcott stated Commissioner Rokosch is absent quite a bit of the time and he would prefer a change in Chairman. **Commissioner Grandstaff made a motion to leave the Chairman and Vice Chairman as they are.** Commissioner Thompson stated it is obvious neither he nor Commissioner Chilcott would be voted in. He appreciates Commissioner Grandstaff's presence and suggested she be placed in as Chairman.

Commissioner Rokosch seconded the motion by Commissioner Grandstaff.

Discussion of the motion took place in regard to Commissioner Rokosch's absence and to have Vice Chair Commissioner Grandstaff handle some of the meetings. Commissioner Grandstaff stated she has no problems being the Vice Chair and being the back up for Commissioner Rokosch but she would prefer not to be Chairman. Commissioner Rokosch stated his continued Chairmanship will provide continuity. Commissioner Driscoll stated she appreciated Commissioner Rokosch's family schedule but also felt it is important to have the Chair present more than being absent. **Commissioner Rokosch and Commissioner Grandstaff voted "aye". Commissioner Driscoll, Commissioner Thompson and Commissioner Chilcott voted "nay".**

Commissioner Thompson made a motion to have Commissioner Grandstaff serve as Chairman for 2008. Commissioner Driscoll seconded the motion. Discussion of the

motion took place: Commissioner Grandstaff stated she would prefer not to serve as Chairman, as she would like to have more time as a Member prior to becoming Chairman. Commissioner Thompson stated Commissioner Grandstaff has stepped in very well during Commissioner Rokosch's absences, and he would appreciate her service as Chairman. **All voted "aye".**

Commissioner Grandstaff motion to appoint Commissioner Rokosch as Vice-Chairman. Commissioner Chilcott seconded the motion and all voted "aye".

The Board addressed scheduling and the Commissioner's ability to calendar items rather than just the office staff. It was agreed to leave staff in charge of the calendar. Discussion of the personal calendar and Board calendar was also discussed. It was agreed Commissioners and staff will have calendaring abilities.

► The Board met for various administrative matters as follows:

- Request from Sheriff Hoffman for payment of various coroner services due to his lack of funding the coroner line item. Discussion included the Sheriff's responsibility to spend the 4.3 million dollars in his budget as needed and not set precedent by having the Commissioners pay for these services. Glenda will set up a meeting with the Sheriff to address this request and to discuss the recent Employee Action Forms he recently submitted.
- **Commissioner Chilcott made a motion to approve the August 2007 minutes as corrected. Commissioner Rokosch seconded the motion and all voted "aye".**
- Glenda addressed upcoming activities for the Ravalli County DUI Task Force that she is Coordinator of. The Commissioners agreed to allow Glenda the ability to utilize two to three hours per month for DUI activities while she is working within the Commissioners office. All other hours will continue to be donated time or paid by the DUI Task Force specifically for the new program of IDEP (Impaired Driving Education Program). Glenda will continue to donate her DUI Task Force Salary to the Task Force in order to fund various programs and supplies for the Law Enforcement Officers.
- **Commissioner Thompson made a motion to adopt Resolution No. 2257 which designates Ravalli County as a Class One County. Commissioner Rokosch seconded the motion and all voted "aye".**
- **Commissioner Chilcott made a motion to adopt Resolution No. 1976 which is a motion to approve of a road abandonment and public easement for Overturf Road by Kevin and Susan Hatch. Commissioner Thompson seconded the motion and all voted "aye".**

► In other business, the Board held a public hearing on an appeal of a denied boundary line relocation for Triple Creek Ranch. Present at this meeting was Planner Tristan Riddell, Clerk and Recorder Staff Linda Biesel, Civil Counsel Alex Beal, and Jay Estes who represented Triple Creek Ranch.

Commissioner Grandstaff called for a staff report as follows:

Tristan gave an overview stating this is an in house review by Planning and Clerk & Recorder. This request appeared to be an evasion of the subdivision regulations in regard to building sites, therefore a denial was made and now the appeal process requires a public hearing before the Commissioners.

Jay Estes presented an aerial view of the boundary line request. Jay made some observations on this issue in regard to the subdivision for lease or rent issue (see the attachment of his comments). In the first boundary line adjustment request, Jay noted the original boundary line addressed two parcels (a 40 acre and 10 acre parcel). They then proposed a boundary line adjustment in order to accommodate a 29 and 21 acre parcel. This too was denied. Now they would like to have a 30 acre and a 10 acre parcel. Jay also noted they have a second denial they would like to address from a parcel that was created as an agricultural covenant. They would like this agricultural covenant moved from a 5 acre wooden parcel to another five acre parcel in an open field. He stated by readjusting these lines they would avoid any DEQ review. Jay stated they would aggregate Lots 1B1 and 1A. He stated Lot 2C1 would not be changed unless the Commissioners requested a lot aggregation in order to clean this up. By relocating the current boundary line they can place the cabins on one parcel would which also exempt them from DEQ review.

Tristan stated under the new regulations any revocation of agriculture must go through subdivision review. Jay felt it was an issue of subjective decision by the Commissioners. Alex stated in order to 'move the status of the land', or remove the agriculture covenant, it must be reviewed under the subdivision process.

Commissioner Grandstaff asked if there could be any kind of transfer on an agricultural covenant. Alex stated there must be a review of the public process for this removal and therefore the Commissioners can only address the first boundary line adjustment request.

There was discussion of comprehensive zoning and administrative review by the Commissioners. Commissioner Chilcott noted state law does not give the Commissioners the latitude to perform any administrative review.

Commissioner Rokosch agreed they need to separate these two issues; first of all it is not calendared for the second request and most importantly the regulations do not allow the applicant to go outside the regulations in regard to moving any agricultural covenant.

Jay suggested they aggregate Lot 1B with 1A and place the cabin on Lot 2C onto Lot 1A and construct the existing cabin onto Lot 2C. If they could do that, they would have a 21 and 10 acre parcel, then they could bring this into one parcel being 31 acres. The boundary line would only need to be adjusted by 50'.

Commissioner Chilcott asked how this proposal is different from the Skalkaho Lodge request for subdivision exemption. Alex stated the difference might be in 'quality or kind' of services, but in terms of the legal aspect it is much the same. Commissioner

Chilcott stated the Commissioners were sued on that decision and the Commissioner's decision was upheld in District Court. If they did not follow their previous decision based on the regulations and knowing the court upheld this, they should expect to be sued.

Alex stated if you grant this request it creates unpredictability by the Commissioners and you are not following the subdivision regulations. Also the Commissioners know the court upheld their decision on the Skalkaho Lodge request.

Some discussion occurred between a private ownership and corporate ownership. Alex stated the public health and safety concerns are still present, no matter who owns the property. While this might be a simple request and seems to make sense, the regulations require public review.

Commissioner Driscoll stated what Jay is requesting makes good sense, but they must follow the law.

Commissioner Rokosch asked Tristan about the notice of public hearing. Tristan noted their denial was based on both lots. The relocation was to put all the sanitation requirements onto Lot D1. Their denial was based on the regulations and the Attorney General Opinion.

Jay stated the opinion was for private properties not commercial properties.

Alex stated the Attorney General opinion separates hotels and motels. There is an interpretation of this opinion that because it is a single building and the product has service for temporary lodging, it could be exempt. However, whether that is a legitimate exemption has not been tested in the courts. Alex stated the issue with the Commissioners' Skalkaho opinion is important. If the Commissioners wanted to review this, the Commissioners would need something different in regard to the title and how this is written out. In other words, the Commissioners need to be aware they might face legal challenges from someone if they were to grant this request based on how the parcels are titled.

Commissioner Chilcott stated Skalkaho Lodge is also multiple cabins, and while he agrees this is a difficult issue, it is important to follow the legislator's intent by following the law and local regulations. He stated he does not see any way around this.

Jay felt it comes down to the ownership issue. Guests do not own these temporary services. Alex stated there might be a way to maneuver around this, as it might be within their agreements on how the cabins are rented. The problem is the decision would be different than the Skalkaho decision upheld by the court. He stated to grant this would be 'a little bit of a stretch' and it would set precedence again. There would be two conflicting decisions by the Commissioners.

Commissioner Rokosch stated their request can be completed; it just must be done through the process of the subdivision exemption.

Discussion took place about moving one boundary line to the east for Lot 2C allowing one cabin on Lot 2C which would allow Lot 1B to aggregate Lots 1B and 1A. Alex stated that lot aggregation would work, and not create any problems with the regulation requirements and previous decision and court decision.

Tristan stated this lot aggregation is not on the calendar for the public hearing so they would need to request it through another appeal hearing.

Jay suggested Alex research the title issue rather than being told no to their request here today. Alex stated the land use issue was not part of the court decision. Commissioner Chilcott stated it would not be Alex's job to research this title issue; it would be the applicant's responsibility.

Alex stated multiple structures are different than one building with multiple rooms.

Commissioner Chilcott felt while they might agree with Jay's argument, they must follow the regulations and precedent set by the Skalkaho case and decision by the Commissioners. Commissioner Rokosch stated this discussion should lead to some changes in the local regulations. Commissioner Chilcott stated the Planning Office has been charged with the zoning process and this change might not come very soon. Alex stated the regulations simply follow state law and thus the regulations could not be changed in this regard.

Wayne Kilpatrick asked if the zoning process will be done in 10 months. Commissioner Grandstaff stated they are on track for zoning by November of 2008. He asked if they should chase the subdivision process or be patient with the zoning deadline. Commissioner Grandstaff stated it might be worth their while to become involved in the zoning process in their area rather than go through the subdivision process.

Commissioner Chilcott stated even if the zoning is on the map, the law won't change in regards to the lease or rent issue. Commissioner Driscoll suggested they also address the legislators in this regard.

Mr. Barrett, Owner of Triple Creek stated he is not in favor of revamping the Montana Law. They have plenty of other sites to put cabins; however it will spread out the facility making it less attractive. This issue of lease or rent should be the Commissioners battle as he has other important issues to address.

Commission Chilcott made a motion to deny the boundary line relocation request of Triple Creek Ranch, that denial which was previously made by the Planning Staff and the Clerk & Recorder. Commissioner Driscoll seconded the motion and all voted "aye". The public hearing was adjourned.

► The Board then finished their administrative and ministerial matters from earlier in the morning which included discussion and decision on correspondence. Administrative Director Skip Rosenthal also visited with the Commissioners in regard to the necessary paperwork for the new Health Insurance. The Commissioners, by previous discussion and decision changed the Health Insurance from MACo to Blue Cross/Blue Shield. It was agreed the Chairman will sign the COBRA Application to Blue Cross/Blue Shield and Eligibility of Domestic Partners forms for their submission.

Minutes: Beth Perkins

► The Board met with Mike McCourt of Johnson Controls to review the Energy Performance Contract. Present were Civil Counsel Alex Beal, Internal Auditor Klarryse Murphy, Administrative Director Skip Rosenthal, Jon Miller and George Tocquigny from Johnson Controls.

George gave a review presentation of the preliminary audit results and key assumptions. He stated all facility improvements would be considered as one project such as the Courthouse, Detention Center, and Administration Building. He stated the maximum payback is 20 years and there will be a 5 year guarantee of workmanship. The capital expenditure credit on all buildings except Youth Court totals \$1.7 million.

George discussed the utilities rebate of \$35,000 and how it would reduce the total cost of the project. He discussed the total savings of the lighting estimated at \$22,000 and the 5% interest rate.

Jon discussed scope of work changes to the Justice Center including lighting ballast replacements and scope of work changes to the Detention Center, with added lighting and the replacement of 3 heat pumps. Jon also discussed the Museum scope of work changes which will include a new steam boiler in lieu of a hot water boiler.

George stated the presentation today is the pretty much the same as the November 26th meeting but they have a detailed and final pricing impact for Commissioner review. The total cost of the project is \$2,108,735, which is the guaranteed maximum price. The first year of savings is estimated at \$87,000 with averages of \$109,000 in total savings. He recapped the simple payback period of 20 years.

George stated there is positive cash flow in each year (pro forma basis). There would be a \$333,000 net present value of cash flow (pro forma). He stated there is also an option of a 15 year finance term rather than the 20 year option. The 20 year option however would net \$400,000 in finance cost savings. George stated they could include the recent expense of \$45,000 for the courthouse roof in the cash flow analysis and \$23,000 for measurement & verification costs during installation as part of project capital cost. The new and current planned service agreement cost will be included for the first 5 years in cash flow analysis.

George gave an overview of the annual cash flow analysis with comparisons to a 15 year finance term versus a 20 year term.

Skip stated he would like to remove the PC power management portion for the administrative building totaling \$17,158. (See Attachment). Skip discussed the balance difference from the previous estimate. George stated the next steps would be to confirm the final scope and issue an RFP to prospective lenders, complete evaluation and selection and Lending Agreement. Klarryse discussed the timeline needed for the RFP. She stated she will verify it with Glenda Wiles. George discussed moving forward with the review, finalizing and the approving the Performance Contract to include scope and terms and conditions. He noted when the Lending Agreement and Performance Contract is approved they would begin construction and start their public relations.

► In other business, the Board met with IT Director Joe Frohlich and GIS Director Ken Miller. Items of discussion included a general update from Joe and a decision on the proposed Board of Realtors contract.

Joe gave an update on the security cameras for the courtrooms. He relayed how they would operate and be monitored noting the images would not be live feed, but rather images. Joe stated he is asking which departments are interested in having the cameras and where they want them. Commissioner Grandstaff stated earlier today they discussed the grant with Becky Knudsen. **Commissioner Chilcott made a motion to sign the grant request for the security cameras. Commissioner Driscoll seconded the motion.**

Commissioner Grandstaff requested any further discussion. Commissioner Rokosch expressed concern with late grant requests coming before the Board. Commissioner Chilcott agreed with Commissioner Rokosch, however in this case, he would hate to miss an opportunity for grant funding. Commissioner Grandstaff stated she is in favor of having a grant policy to include timelines to have the requests brought forth to the Board for approval.

Commissioner Chilcott stated he is in favor of granting approval for this request. Commissioner Driscoll asked if there is time to investigate the administration portion of the request. Commissioner Chilcott replied no, it is due by 5 p.m. Joe stated the grant would be for the Courthouse building not the Administration building. He stated the county would have nine available ports for cameras. Commissioner Driscoll requested clarification of the units. Joe replied it is a VCR-like unit. **All voted 'aye'.**

Joe stated the Board of Realtors approached him and Ken Miller to look up information and county data that can't be printed out in Black Mountain format. Commissioner Rokosch asked if software would have to be created to specifically extract the data they are requesting. Joe replied yes. He has discussed the needed software with Ken as well as the cost. They are looking at three different tables in Black Mountain and charging them on a quarterly basis since they are updated at that time. Joe stated the Board of Realtors had two meetings with his staff. They discussed charging them the rate of \$35 per hour (shop rate). Commissioner Driscoll asked what their response was to the charge. Joe

charge. Joe replied they were compliant. Ken stated the data they considered to be Joe's domain is more involved to extract. He stated the Board of Realtors wanted a contract and a set amount of fees for shop rates and the software. Commissioner Driscoll asked how the changes over time would be in consideration for the software and the fees should it extend over time. Joe replied it would be included in the contract and should it extend over the contract limit, they would address it in the renewal contract. He added they cannot use the data in any kind of mailing list. Commissioner Driscoll stated in the past as a realtor, they used mailings to obtain clients.

Commissioner Grandstaff asked how the quarterly updates would work within the software. Ken replied they could use standard tables in the database and their tech people would do the data massaging. Commissioner Rokosch stated some concerns with the contract. Commissioner Chilcott stated he is opposed to IT and GIS massaging the data for Board of Realtors. It is public record and should be up to the Board of Realtors to format it how they want. Joe replied IT and GIS are looking for guidelines on how to address the Board of Realtors' request. Commissioner Grandstaff asked how it differs from anyone else asking for that data as it is a public record. Ken replied if someone goes to the Clerk & Recorder and requests addresses in a certain area, they would give parcels numbers and tell the person to investigate the addresses themselves and generate their own mailing lists.

Commissioner Grandstaff discussed both the right to privacy with addresses and also the aspect of it being public record. She also requested clarification as to what decision Joe and Ken would like them to make today. Joe stated they are looking for guidance on what product they should give the Board of Realtors and if the county is even interested in dealing with the Board for a \$200 contract. Commissioner Grandstaff expressed her concern in regard to the county employees occupying county time on outside projects. Ken stated they are not asking for anything more than what they are already doing. His concern is the format of the data they are requesting. Commissioner Chilcott stated he is curious about the use of a mailing list with county information. Commissioner Grandstaff stated there are currently a lot of entities existing that already have compiled a mailing list of this information. Commissioner Rokosch stated he is opposed to the use of county resources to generate a mailing list. Ken stated they could add it into the contract with the Board of Realtors. He stated the Board of Realtors would draw up the contract.

Commissioner Grandstaff stated they could provide the data in the formats that exist and charge them the current fees without a contract. Commissioner Chilcott agreed with Commissioner Grandstaff and added that the format should not include any more use of county employee's time and resources. Commissioner Chilcott asked if the Board's answer was sufficient for Joe and Ken. Joe replied yes, they wanted an outline on how to handle these requests from the public. Commissioner Grandstaff stated the information is public record. Her concern is charging fees for the extra time the county employee would end up putting into a public request.



REQUEST FOR COMMISSION ACTION

OG-07-12-1267

Meeting: January 2, 2008 @ 9:00 a.m.
Request: To appeal the denial of a requested Boundary Line Relocation.

I. ACTION REQUESTED

This is a request from Triple Creek Ranch to appeal the denial of a proposed relocation of common boundary lines on parcels 1027500 & 1039800, as depicted on the attached Subdivision Exemption Application (SEA).

II. BACKGROUND

The Triple Creek Ranch boundary line relocation was reviewed by Planning Staff and the Clerk & Recorder's Office in November of 2007. The proposal was to adjust the lot lines between two adjacent parcels in an attempt to create a building site for a proposed rental cabin.

The current lot layout consists of a 39.56 acre parcel and a 10.02 acre parcel (See SEA). There are existing buildings with sanitation facilities located on both parcels. The boundary line relocation proposal would relocate boundaries such that there is an approximately 29 acre parcel and an approximately 20 acre parcel. The resulting 29 acre parcel would be void of buildings with sanitation facilities and would be eligible for a new septic permit, thus creating a new buildable site.

On November 15, 2007, Planning Staff issued a notification of denial for the requested boundary line relocation. In issuing the denial, Staff based the decision on the following rebuttable presumption as outlined in Chapter 4 of the Ravalli County Subdivision Regulations:

- The proposed relocation creates a new buildable tract from one that did not have a practical building site.

IV. STAFF RECOMMENDATION

Staff found that the requested use of the exemption was an attempt to evade the Montana Subdivision and Platting Act and the Ravalli County Subdivision Regulations. Staff recommends that the Board of County Commissioners uphold the original decision for denial.

ATTACHMENTS: Appeal Request
SEA – 07 – 147
STAFF: Tristan Riddell
DATE: December 31, 2007

Triple Creek Ranch
5551 West Fork Road
Darby, MT 59829
821-4600

RECEIVED

NOV 26 2007
IC-07-11-1480
Ravalli County Planning Dept.

November 21, 2007

Ravalli County Planning Dept.
215 South 4th Street, Ste. F
Hamilton, MT 59840

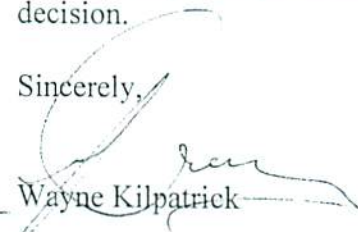
Re: Subdivision Exemption Application (SEA -07-147)
Parcels 1027500 & 1039800

Dear Mr. Riddell:

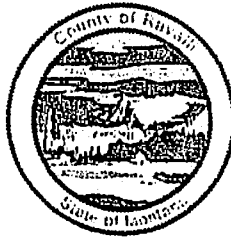
We understand your decision to deny this proposed boundary relocation based upon your interpretation of the existing regulations. Fortunately, however, the system recognizes the need for an appeal process. As you know, we desire to construct two new rental cabins on the Triple Creek Ranch resort to replace a duplex cabin that is being refurbished for additional guest services. We have an ample number of vacant parcels which could be used for this purpose, but rather we desire to confine the footprint of our resort facilities to maintain large open spaces of undeveloped land. Clearly, this does not fit the typical definition or intent of subdivision and therefore we believe it should not be subject to the existing interpretation of regulations.

Due to the impact of this proposal on economic development here in the valley we believe that the county commissioners would want the opportunity to review this, and therefore request a public hearing before the county commissioners to appeal your decision.

Sincerely,


For Wayne Kilpatrick

Cc: Shepherd Surveying, 4488 Thorning Loop, Darby, MT



Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840
Telephone 406.375.6530 Fax 406.375.6531
OG-07-11-1168

November 15, 2007

TC Ranch
5551 W Fork Rd
Darby, MT 59829

Re: Subdivision Exemption Application (SEA -07-147)
Property Description: Parcel #1027500 & #1039800

Dear Mr Kilpatrick:

Ravalli County has examined your proposed subdivision exemption and has determined that you can not use the exemption to adjust the boundary lines between the above-mentioned parcels as applied for. The use of the exemption appears to be an evasion of the Montana Subdivision and Platting Act, as it would create a buildable lot from one that is currently non-buildable. Section 4-6-3 of the Ravalli County Subdivision Regulations outlines procedures for appealing this decision.

If you wish to discuss this further, please feel free to call me at 375-6530.

Sincerely,

A handwritten signature in black ink, appearing to read "Tristan Riddell".

Tristan Riddell
Planner I

Cc: Project File - Subdivision Exemption Application (SEA - 07 - 147)
Ravalli County Environmental Health Department
Ravalli County Clerk & Recorder
Shepherd Surveying, 4488 Thorning Loop, Darby, MT 59829

lb



Hold!
Denied

Planning Department
215 South 4th Street; Suite F
Hamilton, MT 59840
Phone 406.375.6530
Fax 406.375.6531
triddell@ravallicounty.mt.gov

OG-07-10-1114

October 25, 2007

Dear Applicant:

Please see the attached notice of a public meeting regarding subdivision exemption applications. The Planning Department encourages you, or your representative, to attend this meeting and provide input on your application.

Sincerely,

Kimberli J Imig

Kimberli Imig
Secretary

Cc: Clerk and Recorder's Office
Subdivision Exemption Application File
Outgoing Mail File
Shepherd Surveying, 4488 Thorning Loop, Darby, MT 59829

Letter Written _____

EXPIRATION _____

EXTENSION _____

Planning Office Research

Date of Meeting 10/31/2007

Application Code # 07-147 Date Received 10/19/2007

Name of person who checked this application. Linda Beisel

Date Researched 10/26 & 29/07

1. Verify Parcel #s - add or correct as necessary PA 1027500 Ind 3
PA 1039800 Ind 8

2. Note Index #'s near #3 on form by the Legal Description. 3+8

Legal Description: 33-2-21 CS#2402 Parcel D-J and

CS#2448 Parcel I-B

3. Pull and attach copies of deeds (legal descriptions) to application. ✓

4. Note any Covenants or Voluntary Zoning Districts with appropriate #s and research. If Application for Boundary Relocation or Family Transfer is not allowed based on findings, attach copies of applicable pages. Watch for Agricultural Covenants too.

NOT in Zoned Area / Ag Cove revoked 202-282
Couldnt find original Ag Cove

5. Note whether an Amended Plat or a COS is to be filed. CS

6. Look to see if they have done any other Boundary Relocations or Family Transfers. Are they trying to evade Subdivision Review? List or make Copies of the surveys they have already filed.

CS#5752-R #595328-R (See SEA 06-198)

7. Total Acres 39.56 Proposed Acres 29 AC ±
10.02 20 AC ±

8. Any other comments: _____

9. Surveyor: Shepherd Surveying

Title: TC Ranch

% : _____ (NPI)

TYPE OF EXEMPTION
BLR

DENIED
APPROVED

SEA-07-1477
RECEIVED

OCT 19 2007

IC-07-10-1335
Ravalli County Planning Dept.



Ravalli County Planning Department
215 S. 4th Street, Suite F
Hamilton, MT 59840
Phone: (406) 375-6530
Fax: (406) 375-6531
planning@ravallicounty.mt.gov

SUBDIVISION EXEMPTION APPLICATION
RAVALLI COUNTY, MONTANA

1. Applicant Information

☒ \$200 Fee

Name: TC Ranch	Consultant: Shepherd Surveying
Street: 5551 West Fork Rd.	Street: 4488 Thinning Loop
City/State/Zip: DARBYY, MT 59829	City/State/Zip: Darby, MT 59829
Daytime Phone: 821-4600	Daytime Phone: 821-4047

To whom should the original decision letter be sent? Shepherd Surveying

2. Titleholder Information (For relocations of common boundaries, all owners must sign)

Full Name: TC Ranch	Signature:
Full Name: Wayne Kilpatrick Genl. Mgr	Signature: <u>Wayne Kilpatrick Genl. Mgr</u>
Full Name:	Signature:
Full Name:	Signature:

3. Property Information (Include all that apply)

County Tax ID or Parcel Number: 1027500 & 1039800
Certificate of Survey Number: 2402 & 2448 Tract/Parcel D-J
Subdivision Name: _____ Tract/Parcel _____
Legal Description: Section 33 Township 2N Range 21W

4. Type of Exemption Requested (Please check all that apply)

- ☒ Relocation of Common Boundary
☐ Family Transfer
☐ Agricultural Covenant
☐ Mortgage Release
☐ Other _____

5. Prior Use of Subdivision Exemptions (If none, leave table blank. Attach additional pages if necessary.)

Tax ID/Parcel number or property information	Exemption used	Disposition of parcel (Sold, retain ownership, etc.)

Subdivision Exemption Application

6. Conflict of Interest Statement

Are there any financial, business, or personal relationships between the owner of the property, the selling agent, the purchasing agent, the brokerage firm, the developer or builder, consultants, and/or purchasers of the property and members of the Ravalli County Planning Staff and/or the Ravalli County Commissioners?

☐ Yes
☒ No

If yes, please explain.

7. Attachments

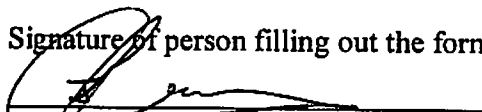
- A. Provide an 8 1/2" x 11" copy of the Certificate of Survey or plat (if a filed Certificate of Survey or plat is not available, a drawing will suffice) that clearly shows the existing boundary of the subject property(ies) and the proposed new configuration. Please represent the existing boundary with a dashed line and the new boundary with a solid line and label boundary lines as "existing" or "proposed."

Family Transfers: Identify which parcel(s) will be "gifted" and which will be the "remainder."

A plat prepared by a surveyor is not required to be submitted with this application.

- B. It is recommended that the applicant attach written responses regarding the general evasion criteria and/or any specific rebuttable presumptions that apply to his/her exemption request. Please note: If a written explanation is not provided, the applicant and/or his/her representative may be asked to respond to the criteria and rebuttable presumptions during the public meeting on this request. (See SEA Supplemental)

Signature of person filling out the form:



Printed name of person filling out the form:

JAY ESTUS

Subdivision Exemption Application

Additional Information Required for Mortgage Releases

- A. A statement of how many interests within the original tract will be created by use of the exemption.
- B. A statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed.
- C. A signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

Additional Information Required for Family Transfers

- A. Please fill out the table below.

Name of Family Member	Relationship

- B. The original landowner (grantor) must provide evidence of the familial relationship with the grantee.
- C. Complete the Notarized Request for Family Transfer Form (on Page 4 of this application).

Comments of Jay Esks

Our discussion this morning is going to lead once again to the topic of subdivision for lease or rent. A topic that has been debated and legislated for many years by minds much better than mine and by people of much higher qualification. I'm not an attorney. I am simply going to share some observations with you. My sole objective today is to describe a problem that I know is of concern to you as leaders of this county, and to stimulate the talent and brilliant minds in this room to formulate a solution.

I've prepared a hardcopy of the outline of my discussion today and you can use it make notes or to catch your thoughts.

Most of you are probably familiar with the resort so I'll just briefly summarize the operation. Triple creek consists of 532 acres on 29 parcels. 11 of those parcels are vacant, 3 others are under conservation easement, and 3 others are under Ag Covenant. The resort consists of a complex of 20 cabins, a restaurant and lodge, housekeeping facilities, horsekeeping facilities, and various exercise facilities including workout room, tennis courts, pool. The resort caters to the upper class with almost all guests being from out-of-state or out-of-country. They provide a truly exclusive vacation experience for their guests and charge a flat rate of around \$1,000 per day which includes meals, lodging, and activities. They have an occupancy rate of approximately 83%. They employ 13 people full time, and another 64 part time, for an annual payroll of around \$1.2M. All revenues from this business stay in the local economy. The resort is open year-round with the exception of the months of November, March, and April, when they perform more serious maintenance or construction activities.

Triple Creek resort desires to construct two new guest cabins, partly to replace some capacity that is being lost in the renovation of an older duplex cabin. In the past, adding another cabin simply required complying with sanitation requirements and building codes. Those days are gone. Due to interim zoning and the current interpretation of regulations, even though we are a tourist resort we cannot put more than one living accommodation on a parcel, and it cannot be less than 2 acres in size. Within these constraints we have three options: 1) construct the cabins on existing vacant parcels; 2) move the boundary lines of existing parcels to create lots that conform to interim zoning requirements; or 3) take the proposal through the subdivision for lease or rent process.

Since the new cabins had already been manufactured by Alpine Log Homes and were awaiting delivery, time was of the essence. I offered a very brilliant solution. Construct the cabins on two empty parcels. To that, I was informed that Mr. Barrett preferred to minimize the overall footprint of development. They have a clustered development plan having a relatively small footprint and he preferred, if possible, to maintain that development philosophy in order to preserve the surrounding open space. The only other expedient option then, was finding a way to relocate existing boundary lines to create the desired building lots, within the existing clustered development and within the guidelines of interim zoning. This was abit more

challenging, but I figured out a way to do it, creating two parcels over 20 acres in size that would exempt us from DEQ and enable construction almost immediately. On October 4th we submitted this subdivision exemption request to planning, in hopes that we'd be able to construct the cabin during the month of November.

I truly feel that we had the complete cooperation of the Planning Department, but within the interpretation of regulations which they currently embrace, they had to deny our request.

As I speak here today I would like you to keep this one very important fact in mind. Triple Creek can sprawl this resort. It has the parcels, but you know as well as I, that minimizing the footprint of development is better than spreading tracks all over. I've dedicated page 2 of the handouts to this very important point in hopes that it reminds us all to stay focused on a solution because a solution is in the best interest of Ravalli County. We're here today asking you planners and commissioners for your help in formulating a solution which will enable us to maintain the clustered development plan of this resort, and which will enable us to construct two cabins without delay.

We do not want to drag this development through the subdivision for lease or rent process. Foremost, because its time consuming. Secondly, because the existing subdivision regulations were primarily designed to ensure development standards for proposed residential and commercial subdivision of undeveloped land. Recognize this, its one thing to impose subdivision on an empty parcel. Its entirely different imposing subdivision on an existing entity, especially one holding to an entirely different development philosophy. This resort is a clustered development; interim zoning mandates sprawl. Within that context the subdivision process is not designed to objectively evaluate our existing tourist resort. You'd be evaluating an existing infrastructure in terms of different development standards (not necessarily better standards for a tourist resort, just different standards designed around the typical residential development). Let me give you an example. I have in my hand a Christmas cookie. Anyone picking up this cookie would think to themselves "this is going to be a good experience". Now lets use our imagination for a moment. This Christmas cookie is the Triple Creek Resort. It's a luxury resort with five star dining, log cabins with hot tubs, spa, paved roads, buried utilities, nestled in the woods with wildlife in abundance, with fish ponds and creeks bubbling through. Now let me apply to this cookie the Ravalli County subdivision for lease or rent process.

Ultimately, I should end up with a subdivision that looks just like all the rest. Now I ask, is this a better cookie, or I should say, is this a better Triple Creek Resort? That answer is entirely subjective. Now what is this that got cut off? This represents the cost of the process and collateral damage. This first nice big chunk looks at least \$60,000 - \$80,000 in size. It represents the preliminary plat, the application, the professional engineers that do the grading and drainage plan, the road certification, the engineers that certify the bridges and the public water system, the traffic study, the forester doing the wildland fire hazard assessment, the biologist doing the environmental assessment and sensitive species report, the DEQ process, the second professional engineer to review the grading and drainage plan and road

design of the first professional engineer, submission fees, impact fees, variances, mitigation, etc. This next nice chunk represents changes you're going to have to make for a number of reasons, including roads because they aren't county standard, some grades are too steep, the turning radius around some of your cabins is too tight for a schoolbus, you don't have adequate stop signs, your creek needs to be fenced to keep kids from falling in, your bird feeders are too low, etc. These other little chunks represent the collateral damage, the Orvis Fly Shop that just lost out on 150 float trips and guided fishing trips over the next three years, the hats that Jimmy the hatter didn't sell and knik-knaks that Old West didn't peddle, the rental cars that didn't get rented, the guided snowmobile and ATV trips that didn't happen, the original artwork that didn't sell, the massages that weren't performed, the state bed tax that wasn't collected, etc.

The cost and the time involved in this subdivision process would be excessive. I know we'd all like to think that the process could be done in less than 18 months, but I'm involved in several subdivisions that have well exceeded the two year mark and they don't even approach the complexity of this submission. I honestly wouldn't expect it any sooner than three years. From my standpoint, simply preparing a preliminary plat and compiling the application materials would take at least 8-10 months. A one year delay will result in lost revenue on these cabins of approximately \$220K. Multiply that number by three and you have what approximates the cost of the subdivision review process to Ravalli County in terms of missed opportunity or lost income. Multiply the number again by three and you get a picture of the true economic loss to Ravalli County, because as we all learned in business school these tourists purchase all kinds of goods and services while they're here, and money circulates about three times before it finally ends up somewhere else.

Another point I need to make is that this proposed development is consistent with the objectives stated in the Ravalli County growth policy. The Growth Policy states in Countywide Goal 6 that we want to "promote and encourage a vibrant, sustainable, healthy economic environment that recognizes existing businesses and attracts new entrepreneurs: Countywide Policy 6.7 states that we are going to "support an expanded, more vital, environmentally sustainable tourism and recreation industry. You know as well as I that there is nothing more desirable to this valley than the tourist resort dollar. It represents the cleanest transfer of dollars into our economy. They bring their dollars, and leave with an experience. They don't consume natural resources, they don't leave environmental waste, and we don't have to mail half the money away as cost of materials. So clearly, we need to support this industry.

Before I get into the specifics of our proposed boundary relocations, let me define a little further what we're dealing with. This is a five star luxury resort that has been in business for 21 years. The resort is constructed about one mile from the West Fork Road at the end of a paved private driveway and there is only one adjoining landowner to the resort. There is more than one entrance and exit. It has its own state-approved public water supply. All roads are paved. It's a very peaceful resort with very little vehicular traffic where guests drive around in little golf cart-type cars that look like something out of the Jetsons. All structures have permitted drainfields.

All guest facilities comply with building codes and are built to the finest standards. Utilities are buried. The resort has been well planned and has not developed randomly. It bears no resemblance to a mobile home park or an RV park. Wildlife are protected, and it's not uncommon to see an elk herd within 100 yards of the lodge. Any use of public services is extremely rare. All roads required for the development of these two proposed cabins already exist. Permission has already been granted to connect to the public water supply, and drainfield site evaluations have already been done for both cabins.

On this exhibit, for the sake of scale I'm showing just the eastern portion of the Triple Creek Ranch and the resort where development is proposed. Here is the entrance on the West Fork Road and the driveway up to the lodge. I've labeled parcels currently vacant and construction could begin by simply purchasing a septic permit. Resort development has been localized on these parcels. I've highlighted in red the location of existing guest cabins. The resort desires to construct a new cabin here, and here. Let me point out that we presented two different subdivision exemption requests to planning. They were both turned down, and for different reasons, so I'm going to discuss each one separately.

This first boundary relocation involves two parcels, containing approximately 50 acres. We proposed moving this boundary line as shown here, to here, to consolidate the ranch manager's residence and this cabin onto this parcel with most of the other cabins on it, placing most of the resort onto this 20 acre parcel. The remaining parcel was 29 acres in size, with a horse barn. This proposal was denied. The rationale was that we were creating a buildable lot from one which is non-buildable. Let me read to you the rebuttable presumption for Relocation of Common Boundary as stated in section 4-5-1 paragraph d(iii) of our subdivision regulations, and I quote: "The proposed relocation creates a new buildable tract from one that did not have a practical building site".

This rebuttable presumption came from case law in which one was proposing to combine essentially unusable parcels of land to form useable parcels. We are not combining slivers, alleys, wetlands or other worthless land to create a building site. We have a 40 and a 10 acre parcel and we are proposing a boundary relocation that will result in a 30 and a 20 acre parcel. We clearly have a practical building site.

But, planning adds another condition: Parcels with existing dwellings are also nonbuildable. Now why is that? That's because in Mr. McCubbins memo dated May 20, 2004, he quotes an AG Opinion which makes one direct reference to second dwellings, and I quote, "The 1985 AG Opinion reiterated the 1984 holding, finding in part that a second dwelling on a parcel constitutes a "division of land" and thus a "subdivision" where possession of the second dwelling will be taken by a family member". And that makes perfect sense to me. That case was addressing private property in which color of title was connected to the second dwelling by virtue of the fact that family member was to assume occupancy. That family member may have lived there all their lives, worked the land, and had a verbal agreement with dad to take it over some day. But that AG Opinion was addressing a second residential

dwelling involving a family member. I believe it's a real stretch to get from there, to Patrick O'Herren's current interpretation in which he includes "second dwelling units or commercial uses on one parcel", referring to his July 23, 2004 memo to commissioner Betty Lund. These AG Opinions are enforcing the spirit and intent of the MSPA by closing loopholes and forcing any type of residential expansion into the subdivision process. They all have a common thread, and that is that the accommodations are intended for residential dwelling, or could be used for residential dwelling. And you're thinking, well what about RV parks. I've seen a lot of RV parks with the same RV's or campers sitting in the same place for years. In every case the issue boils down to color of title, and if you reside there in a lease or rent capacity, as established in Landlord & Tenant (1970), I quote "it is a well established principle that a tenant not only takes possession of the individual dwelling unit, but also acquires an interest in that portion of the parcel upon which the dwelling unit is constructed".

Now that I've heard your argument, please hear mine. I ^{going to} ~~again~~ defer to Eddy McClure's memo to Rick Liable in which he refers to the MSPA and says: "that Act was more focused on regulating the overcrowding and public health and safety issues caused by the division of land for residential development." But there's also another distinction that I think we should make. For the sake of example let me use the Rye Creek Lodge. The Rye Creek Lodge has about five rental cabins. When you call the lodge you are purchasing a rental cabin and you are going to pay probably anywhere from \$150 to \$250 a day. These are very nice cabins, as nice as they get.

When you call the Triple Creek Ranch, you are purchasing an experience. That experience includes recreation, the finest food, a little culture, and a place to put your head. It's a turnkey vacation. The distinction is this, if Triple Creek were renting cabins they probably wouldn't be in business very long charging \$1,000 a day. They are marketing an experience, and lodging is included. Within that experience, the guests cannot change the wallpaper, paint the bathroom, or mow the yard. The property is corporately owned and no guest accommodations are residential. So the points I'm trying to make here:

- 1) The spirit and intent of the MSPA was to force every division of land for residential development, including lease or rent, into subdivision review.

- 2) Triple Creek Resort is marketing an experience, not a rental cabin. The cabin is just an accessory.

- 3) Patrick O'Herron used judicial license to include the words "or commercial uses on one parcel" in his interpretation of what constitutes a nonbuildable lot by virtue of second dwelling. This language does not appear to be used in any AG Opinion or by any attorney referenced in the materials upon which planning makes reference in their justification of what constitutes a nonbuildable lot.

What I'm saying, is that in this packet of material that the planning office handed me as justification for their determination of nonbuildable status, the only reference to "second commercial uses on one parcel" is in Patrick O'Herren's memo. While the spirit and intent of all these Opinions and letters are addressing color of title associated with any type of residential dwelling, not once is the word "Commercial" used. I think if they meant to target commercial entities, they would have used the

word commercial. They tend to choose their words very carefully and I believe commercial controls were intended to be left to the discretion of local governments through the zoning process. This is what we believe: The second-dwelling restriction described in the 1985 AG Opinion was intended to uphold the MSPA as it related to divisions of land for residential dwelling. Extrapolation to include second "commercial uses" involved judicial license by the planning director, and was not the intent of the 1985 AG Opinion. Therefore, we have practical building site, we are buildable, and we are entitled to use of the boundary line relocation exemption.

The Subdivision and Platting Act as well as the interim zoning measure were designed to address what was perceived as runaway unplanned, poorly planned, or random residential development. We are not residential expansion, we represent the most desirable form of commercial economic development in this valley, so we are asking you commissioners to overturn this non-buildable determination which is based upon court cases and Attorney General Opinions taken out of context, and was intended for a totally different target. Our hope is that you will say that based upon your review, this parcel does appear to be buildable and therefore qualifies for the boundary line subdivision exemption. With that, we are still in compliance with the two acre minimum interim zoning requirement, we are over 20 acres in size so will not be delayed with DEQ review, we already have sanitation approval as well as approval to connect into the public water supply system, and therefore could begin construction as soon as the plat is filed and the cabin will be in service by this summer.

At this point, I'm ready to change gears and talk about the other proposed boundary relocation. Do you have any specific questions regarding this proposal or would you like me to continue?

The second cabin is proposed for the location shown here. As you can see, it falls on this lot which was created in 1986 using an agricultural exemption. We understand that lifting ag restrictions subject the parcel to subdivision review. We aren't necessarily asking you to lift the Ag restriction, but we are asking you to allow us to move the ag restriction from this 5 acre wooded parcel, to a 5 acre parcel located in this field. Clustering this cabin with the others allows us to keep this parcel undeveloped. It is frequently ranged by a herd of elk and we would like to preserve it as open space.

You'll see here that a cabin has been constructed right across the property line. We would like to get this resolved and there are two ways to do it. Both involve jogging the line. We could jog the line and put this cabin on its own two acre parcel with a drainfield easement onto the adjoining parcel, or we could jog the line the other way and place the cabin on this 10 acre parcel with its drainfield. In either case we would also like to aggregate these two lots because being over 20 acres in size will exempt the parcel from DEQ review so we wouldn't have that 4-5 month delay. Again to summarize, we would like you to approve moving this ag parcel from its current location here, to a new location here. And then we would like to correct this construction error by either jogging this line to get it onto this parcel with an

aggregation of lots, or jogging the line and creating a two acre parcel for it, which will result in DEQ delays. I'm sure planning wouldn't have a problem with an aggregation of lots, but if you would approve it I believe it would save us the time and expense of another Subdivision Exemption Application. The resulting parcel on which we'll construct the cabin will be over 20 acres in size, exempting us from DEQ review and allowing construction as soon as the plat is filed. Do you have any questions.

Closing Comments

In wading through this process the last several months it has become clear that the tools designed to control residential growth are having, ~~or are certainly going to have~~ a detrimental impact on the tourist industry in this valley. Certainly the two-acre minimum lot size doesn't make a whole lot of sense in the context of the tourist resort, nor does the second dwelling interpretation advocate the rental cabin industry. And certainly forcing one into the existing subdivision process just to get started isn't going encourage development or expansion. ~~I was involved with another resort several years ago, one that wanted to expand by adding a couple cabins. We experienced the same problems, but to a far less degree simply because the subdivision process wasn't near as complex, or should I say refined, and expensive back then. Nevertheless, it was formidable enough for the landowner to give up. I believe they resurrected their project using the family transfer exemption a couple years later.~~

I think its important, especially at this time when zoning is about to settle in, that unless we recognize the unique personality of the tourist resort, and make accommodations for it within the subdivision regulations, you will stagnate growth just like we're already seeing in residential subdivision. There is no reason we should expect a different response from the tourist resort industry.

I think what you've seen here today is a good example of the point I'm trying to make. We're trying to do something good for the valley but we've become victim to the law of unintended consequences. You'll see a lot more of this as zoning progresses. But in our case, we're handcuffed by regulations that were designed to control residential expansion, and unless you commissioners provide relief the only solution is a 3 year delay and probably a \$100K paper chase.

~~What I'm thinking~~ is perhaps Ravalli County should consider adopting an ordinance that would enable ~~the~~ planning department to recognize the planned unit development, or maybe the planned tourist development. In essence, we desire some type of fast-track review process in which regulation would give way to negotiation and common sense. All I know is that right now, the planning department has no card in its deck to be of any help whatsoever to the resort entity. ~~We shouldn't have to be here today begging you to allow us to move boundary lines around so that we comply with regulations and a zoning ordinance that was masterminded for an entirely different target. The Triple Creek Resort is well planned and designed and should be permitted to continue expansion within the context of a tourist resort without being exposed to the entire subdivision review process and the~~

related fees and expenses of that process. I'll guarantee that there are other resorts that couldn't survive the process therefore they will never expand.

The subdivision regulations aren't going to be revamped for awhile and with zoning coming down the pipeline it will only add more red tape and complexity. Unless you give some directive to planning to find a way lessen the impact or exposure and financial hardship of the process, I guarantee you won't see this aspect of the tourist industry expand. Bottom line is, unless you do something to actually help the industry, Countywide Policy 6.7 is mere rhetoric. I would ask that you draft a resolution recognizing the unique nature of the tourist resort industry, exempting it from the strict letter of the subdivision regulations by allowing for case by case review of each element of the application, allowing for negotiation apart from the variance process. The variance process could perhaps be used more as an appeal process before the commissioners. This, I believe would be a good start.

Three-fold criteria which will be used for evaluating zoning variances:

- 1) hardship
- 2) no detriment to the public good, and
- 3) no derogation from the intent and purpose of the ordinance.